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No. 344

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES A. CORLISS, PETITIONER

v.

FRANK K. BOWERS, AS COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENT

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MEMORANDUM FOR RESPONDENT

The respondent does not oppose the petition for certiorari.

This case involves the question of the constitutionality of subdivisions (g) and (h) of Section 219 of the Revenue Act of 1924, which taxes the income from revocable trusts to the settlor instead of to the beneficiary thereof.

The language of the statute (Revenue Act of 1924, c. 234, 43 Stat. 253, 277; U. S. C., Title 26, Sec. 960) is as follows:

> SEC. 219. (g) Where the grantor of a trust has, at any time during the taxable year,

either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

(h) Where any part of the income of a trust may, in the discretion of the grantor of the trust, either alone or in conjunction with any person not a beneficiary of the trust, be distributed to the grantor or be held or accumulated for future distribution to him, or where any part of the income of a trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in paragraph (10) of subdivision (a) of section 214), such part of the income of the trust shall be included in computing the net income of the grantor.

Pursuant to this provision a tax, amounting to $44,687.43, with interest, was assessed against the petitioner, based upon income received by his wife in 1924 under a trust created by him in 1922, which he reserved the right to revoke at any time. The tax was paid under protest and this suit was brought for its recovery. Both the United States District Court for the Southern District of New York (Opinion, R. 40) and the Circuit Court of Appeals for the Second Circuit (Opinion, R. 55) upheld the constitutionality of the sections in the instant case, and so did the United States District Court for the

Western District of Pennsylvania in *Clapp* v. *Heiner* (not yet reported).

We know of no decision in conflict, and submit that respondent's contention is a proper extension of the principles enunciated in *Taft* v. *Bowers*, 278 U. S. 470, and *Reinecke* v. *Northern Trust Company*, 278 U. S. 339.

While we believe the case to have been correctly decided by the courts below, the precise question is one of first impression and of general importance; and as the case affects numerous revocable trusts now in existence, it would seem desirable that the question be settled by this Court.

The Government, therefore, does not oppose the issuing of the writ.

Respectfully submitted.

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